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8 *Executive Risk Specialty Insurance Company*

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA

11 LENS CRAFTERS, INC., and EYEXAM OF
12 CALIFORNIA, INC.,

13 Plaintiffs,

14 v.

15 LIBERTY MUTUAL FIRE INSURANCE
16 COMPANY; EXECUTIVE RISK SPECIALTY
17 INSURANCE COMPANY; UNITED STATES
18 FIRE INSURANCE COMPANY; MARKEL
AMERICAN INSURANCE COMPANY and
WESTCHESTER FIRE INSURANCE
COMPANY,

19 Defendants.

20
21 AND RELATED CROSS ACTIONS
22
23

No. C07-02853 SBA

[Related Case No. C 04-01001 SBA]

**STIPULATION AND ~~PROPOSED~~
ORDER DISMISSING CERTAIN
CLAIMS WITH PREJUDICE**

24 Pursuant to Fed. R. Civ. P. 41(c), the remaining parties to this action hereby stipulate as
25 set forth below.

26 WHEREAS, on July 27, 2007, defendant/cross-claimant Markel American Insurance
27 Company ("Markel") filed a Cross-Complaint against Executive Risk Specialty Insurance
28 Company ("ERSIC") in this action;

1 WHEREAS, on September 4, 2007, defendant/cross-claimant ERSIC filed a Cross-
2 Complaint Markel American Insurance Company ("Markel") in this action;

3 WHEREAS, Markel previously dismissed its Cross-Complaint against ERSIC without
4 prejudice by stipulation of the parties;

5 WHEREAS, pursuant to the terms of a settlement reached between ERSIC and Markel,
6 ERSIC has agreed to dismiss its Cross-Complaint against Markel *with prejudice*, and Markel has
7 agreed to request that its dismissal of its Cross-Complaint against ERSIC be made *with prejudice*.

8 NOW THEREFORE, is it hereby STIPULATED by and between the remaining parties to
9 the present action, through their attorneys of record, that:

- 10 • ERSIC's September 4, 2007 Cross-Complaint shall be DISMISSED *with prejudice*
11 as to Markel; and
12 • Markel's July 27, 2007 Cross-Complaint shall be DISMISSED *with prejudice* as
13 to ERSIC.

14 Respectfully submitted,

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16
17 DATED: April 6, 2009

TROUTMAN SANDERS LLP

18
19 By /s/ Terrence R. McInnis

20 Terrence R. McInnis
21 Attorneys for Defendant
22 EXECUTIVE RISK SPECIALTY INSURANCE
23 COMPANY
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1 DATED: February 11, 2009

LONG & LEVIT LLP

2
3 By Irene Yesowitch

4 Irene Yesowitch

Attorneys for Defendant

5 MARKEL AMERICAN INSURANCE COMPANY

6
7 **ORDER**

8 Good cause appearing, IT IS HEREBY ORDERED that:

- 9
- 10 • ERSIC's September 4, 2007 Cross-Complaint is and shall be DISMISSED *with*
 - 11 *prejudice* as to Markel; and
 - 12 • Markel's July 27, 2007 Cross-Complaint is and shall be DISMISSED *with*
 - 13 *prejudice* as to ERSIC.

14 DATED: 4/6/09

15 *Laundra B. Armstrong*
UNITED STATES DISTRICT JUDGE

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